

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 611 of 1998

in

SPECIAL CIVIL APPLICATION No 3282 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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UNJHA AGRICULTURAL PRODUCE MARKET COMMITTEE

Versus

STATE OF GUJARAT

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Appearance:

MR KS JHAVERI for Appellants  
MR. DESAI, GP for Caveator.

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

Date of decision: 30/04/98

ORAL JUDGEMENT ( Per Dave,J.)

Heard Mr. Zaveri, learned Counsel for the appellants and learned G.P. Mr. Desai appearing on Caveat. Appeal is admitted and in the facts and circumstances of the case is finally heard with the consent of the parties.

By this appeal, the appellants-original petitioners challenge the order passed by the learned

Single Judge of this Court in Spl.C.A. no.3282/98 on 23rd April, 1998.

The petitioners in Spl.C.A no.3282/98 had challenged the order dated 20th April, 1998 passed by the Joint Secretary, Government of Gujarat produced at Annexure "D" to the petition.

The learned Single Judge while issuing Rule, refused interim relief for stay of operation of the said order which has given rise to the present Letters Patent Appeal.

Learned Counsel Mr. Zaveri appearing for the appellants has challenged the order of the learned Single Judge on the ground that the learned Single Judge has not taken into consideration the fact that the powers under Section 54 of the Gujarat Agricultural Produce Market Act, 1963 once exercised cannot be reexercised by the Government. His say is that the Government had earlier exercised this power nominating the members when bifurcation of Unjha and Unava Agricultural Market Produce Committee was ordered on 31st January, 1997 by the Government, copy of which is produced at Annexure "A" to the petition. Mr. Zaveri further submitted that the learned Single Judge has not taken into consideration the aspect of Pleasurer Doctrine. It has also not been taken into consideration by the learned Single Judge that the order is in the nature of punishment, and therefore, could not have been passed without giving audience to the petitioners-appellants and following the principles of natural justice. He, therefore, urged that the order passed by the learned Single Judge may be quashed and interim relief prayed by the petitioners-appellants may be granted while allowing the appeal. He has placed reliance on the following decisions:

1. Harshadrai Shantilal Shah and another Vs. State of Gujarat and others, 1996(1) G.L.H. 806.
2. Nasiruddin Vs. State Transport Appellate Tribunal, A.I.R. 1976 S.C. 331.
3. Lachmi Narain etc. etc. V. Union of India & others, A.I.R. 1976 S.C. 714.
4. Nava Samaj Ltd., Nagpur V. The Registrar of Companies, 67 B.L.R. 362.

The learned G.P. Mr. Desai submitted that at the outset it may be taken into consideration that this

L.P.A. is preferred against refusal of interim relief while the Spl.C.A. is still pending before the learned Single Judge, and therefore, no interference is required at this stage. Mr. Desai further submitted that the nomination was under Section 54 and the Government has acted in furtherance to the powers vested in it under Section 54(2). While drawing our attention to the order of the Division Bench of this Court in Spl.C.A. no.8953/97, Mr. Desai submitted that a direction was given in that application to the Government which could not have been ignored by the Government. He has drawn our attention to the affidavit-in-reply filed on behalf of the Government. He has further submitted that a nominated member can be in the office for a maximum period of two years which is the limit and the nominated member cannot claim to be placed in parity with an elected member or an employee. Mr. Desai stated further that balance of convenience tilts in favour of the respondents. He has placed reliance on the decision in the case of State of Mysore and others Vs. Mallick Hahim & Co.etc. reported in A.I.R. 1973 S.C. 1440 as also the unreported decisions of this Court given in Spl.C.As. nos.7408/97, 7950/96 and 9402/97. He urged that when the learned Single Judge is still seized of the matter in question to be decided by him finally, at this interlocutory stage, this appeal may not be entertained.

We have taken into consideration the submission of the rival sides and we hold that no interference in the impugned order of the learned Single Judge is called for by us for the reason, at the outset, that the learned Single Judge has issued Rule in the matter, the Spl.C.A. is still pending before him and he has only refused the interim relief. The decision of the Division Bench in Spl.C.A. no.8953/97 which directs the Government to take certain action about the alleged financial irregularities involving an amount of nearly Rs.49.05 lakhs could not have been ignored by the learned Single Judge, so also, by the Government and as such without making any observations and without expressing any opinion about the applicability or otherwise of Section 54 of the Gujarat Agricultural Produce Market Act and the powers of the Government to reexercise the powers under Section 54, as we find that no error is committed by the learned Single Judge in not exercising his discretion by not granting Interim Relief, we dismiss this appeal with no order as to costs.

(A.L.Dave,J.)

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